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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,621	09/17/2001	Jerry G. Hodsdon	310048-561	6827

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/954,621	HODSDON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nasser Ahmad	1772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-29,44-50,52,54-75,77-81 and 84-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-29,44-50,52,54-75,77-81 and 84-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 29, 2004 has been entered.

### ***Indicated Allowability withdrawn***

2. the indicated allowability of claims 19-29, 65, 66 and 69-74, and the claims 82 and 83 as objected to in the last Office Action has been withdrawn in view of the newly discovered prior art to Grass (4188251).

### ***Rejections Withdrawn***

3. Claims 44-46, 48, 57-58, 61-62, 75 and 77 rejected under 35 USC 102(b) as being anticipated by LaMers in view of the amendment filed on November 29, 2004.

4. Claims 47, 49, 50, 54-56, 59-60, 63-64 and 78 rejected under 35 USC 103(a) as being unpatentable over LaMers in view of the amendment.

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5. Claims 77-81 and 84-91 rejected under 35 USC 103(a) as being unpatentable over LaMers in view of the amendment.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 19-26, 29, 44-48, 50, 52, 54-55, 57-62, 65, 67, 69, 71-73, 75, 77, 79-81, 84-85, 87-90, 92 and 94-96 are rejected under 35 U.S.C. 102(b) as being anticipated by Grass (4188251).

Grass relates to a label sheet construction comprising a liner sheet (11) with release coat (13), a facestock sheet (12) adhered to the liner sheet with adhesive (14), and at least one cut line (15) through the facestock but not through the liner sheet (see figure-3) to form a facestock sheet label assembly releasably adhered to the liner sheet. The facestock sheet includes a first weakened line segment (20) on one side of the label (17) and outside of the label, and a second weakened line segment (20) on an opposite side of the label and outside the label, when every other label (17) in figure-3 is taken to be labels with the line segments being between the spaced apart labels. Then, the two segments lie in the same line and extend from a first longitudinal side edge to a second longitudinal side edge. The same line passes through a portion of the label in that it coincides with the top edge of the label. Similarly, third and fourth weakened line

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segment are formed in the facestock to form a second same line, which is taken to be the outside edge of the label.

The weakened portions of the first and the second line are of the same length and at least one can have unweakened portion, in that line (20) is a perforated line with unweakened portions and cut line therebetween.

Regarding claim 44, the perforation line's uncut portion would provide for the short uncut section as the spacing between the label and the weakened line segment.

The phrase "adapted to be" has not been given patentable weight because it is not found to be of positive limitation as it only requires the ability to so perform.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 27-28, 49, 56, 63-64, 66, 68, 70, 74, 78, 86, 91 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grass.

Grass, as discussed above, fails to teach that the labels are of burst configuration. It would have been obvious matter of design choice to modify Grass by providing the label to have a burst configuration or circular shape for aesthetic appeal as such a change would involve a mere change in the shape of the product. A change in shape is

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generally found to be within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

As for the label construction comprising a multi-column and multi-row array of labels, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Grass by providing an array of rows and columns of labels, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

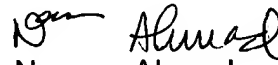
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nasser Ahmad  
Primary Examiner  
Art Unit 1772

N. Ahmad.  
February 22, 2005.